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COMMITTEE ON THE RIGHTS OF THE CHILD

Twenty-eighth session

SUMMARY RECORD OF THE 726th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 26 September 2001, at 3 p.m.

Chairperson: Mr. DOEK

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Kenya (continued) (CRC/C/3/Add.62; CRC/C/Q/KEN/1; written replies of the Government of Kenya to the questions in the list of issues (document without a symbol, distributed in the meeting room in English only))

1. At the invitation of the Chairperson, the members of the delegation of Kenya resumed places at the Committee table.

2. Mr. OLE KWALLAH (Kenya) said that the main coordinator of programmes dealing with children was the Ministry of Finance and Planning, which chaired an inter-ministerial committee whose membership included representatives of various government services. The Children Bill before Parliament would shortly be establishing a National Council of Children's Services, which would coordinate planning, financing and any other aspects of such services. Authority to address children's issues had been decentralized to various regional, district and local authorities, with area children's advisory committees acting as grass-roots structures. Since 2000, the central Government had increased its support and funding for such bodies with the aim of facilitating dialogue and targeting problem areas. Once the Children Bill was enacted, the area children's advisory committees would become part of the National Council.

3. The Kenyan Constitution did not permit direct reference to international conventions in court; enabling legislation was needed for their provisions to become applicable. The tribal clashes which had taken place in 1992 and 1997 had resulted in the displacement of a large number of families many of which were living in displaced person's camps, and the Government had appealed for assistance in settling them and in providing support for their children. The United Nations Development Programme (UNDP) had provided valuable assistance in that regard. The President of Kenya had commissioned a report on the clashes, but it was already clear that the central problem underlying the tensions had been land disputes. The President had therefore established a commission to study land issues.

4. In cases of child abuse in the family, the child could lodge complaints directly with the Department of Children's Services, which had established a help line in the Nairobi area with fax, phone and email access, staffed by three or four officers who responded rapidly. The service also responded to reports from other children, good samaritans, relatives and others. Similar hotlines were being established in the other regions.

5. Foster care was the formal, temporary placement of a child up to the age of 18, whereas adoption was the permanent placement of a child under 21 with an adoptive family. Many foster parents had erroneously assumed that their children had been officially adopted, but adoption was a more formal procedure requiring a decision by a high court judge. Cases of intercountry adoption were fairly rare, as the law stipulated that they could take place only in special circumstances.

6. Mr. WAMBUA NZIOKA (Kenya) said that the Government considered it unacceptable for children to accompany mothers to prison, and had developed the use of community service orders as an alternative means of sentencing. The numbers of children accompanying their mothers in prison had decreased somewhat since 1991, the reference year for the figures cited in the report. Such cases were generally limited to women jailed overnight or for very short terms, such as a few days. With alternative sentencing, it was hoped that the number of imprisoned petty offenders would decrease. The Government had just one facility, in Nairobi, for children whose mothers were incarcerated, but it also worked closely with voluntary institutions to care for such children.

7. Mr. OSUNDWA (Kenya) said that the Government would be eager to learn from the Committee how other countries dealt with the problem of regulating children's access to harmful material on the Internet.

8. Mr. SANG (Kenya) said that the legal basis for corporal punishment in schools had existed since 1972, and that in 1997 the Director of Education had issued a circular cautioning teachers on the use of the cane and restricting it to certain circumstances. The cases cited by Human Rights Watch had indeed occurred, but the Government considered that they had been isolated instances. Because many teachers had ignored the prescriptions pertaining to corporal punishment, in March 2001 the Minister for Education had issued new subsidiary legislation in the form of a legal notice, which prohibited outright corporal punishment in schools. The Ministry was currently developing course materials for teachers and schoolmasters on methods of maintaining discipline without resorting to corporal punishment. The Government was prepared to learn from the examples of other countries, and the delegation looked forward to taking part in the Committee's presentation on the subject during the current session.

9. Mr. KANDIE (Kenya) said that a Domestic Violence (family protection) Bill was due to be discussed by Parliament in the near future. Its main provisions would allow courts to intervene in order to provide protection against domestic violence such as sexual and psychological abuse, harassment, threats, intimidation and damage to property. The need for such a bill had become clear as a result of the work of the Task Force on the Laws Affecting Women, which had been set up in 1993, and also because the Government felt it had to respond to a general increase in the level of violence against children, including mass murder.

10. The law of evidence requiring corroboration in the event of crimes committed against children was based on an old rule. However, realizing that it was very difficult to convict offenders if that standard was applied strictly, the courts had relaxed the requirement. They now relied more heavily on medical or circumstantial evidence, with due consideration for the need to place the standard of proof at a higher level in criminal cases.

11. The problem of discriminatory provisions concerning citizenship had attracted the Government's attention. Although the Constitution of 1963 recognized gender equality, the law governing citizenship had its own history. The matter would be addressed during the constitutional review. The Government was also pressing for the adoption of an Equality Bill that would outlaw any such discrimination based on gender.

12. According to the Task Force on the Laws Affecting Women, personal laws sometimes included provisions that were discriminatory. The personal laws, which were confined to certain well-defined areas related to family matters, would be reconsidered as part of the constitutional review. In any event, all laws must conform to standards within the national community and legal framework. In addressing the ethnic clashes of 1992 and 1997, the Government had established a judicial commission of inquiry to encourage reconciliation and peaceful coexistence, and had taken measures to relax tensions. The Standing Committee on Human Rights had also visited the affected areas, and had identified as the root causes of the clashes political and economic rivalry, the distribution of resources and inflammatory sectarian statements made by certain persons. Its recommendations had been submitted to the Government and had helped shape the authorities' confidence-building and security measures.

13. Mr. WAMBUA NZIOKA (Kenya) said that in most communities in Kenya children had by tradition not been given participatory rights, but that the situation was changing thanks in large part to sensitization campaigns conducted by the Department of Children's Services, non-governmental organizations (NGOs) and the United Nations Children's Fund (UNICEF). As a result of those efforts, Child Rights Clubs had been formed, with the aim of presenting children's rights in a meaningful manner from the perspective of rights and responsibilities. In those areas where the clubs had been active, communication had improved greatly not only between children and school personnel, but also between children and their parents.

14. Mr. WAITHIRU (Kenya) acknowledged that the implementation of structural adjustment programmes, with their emphasis on cost-sharing, had compromised the best interests of the child in Kenya. One aim of the national poverty reduction plan was to establish safety nets for vulnerable groups adversely affected by structural adjustment. The plan was being implemented through the poverty reduction strategy, which was aimed at stimulating growth, improving governance, raising the income opportunities of the poor, improving the quality of life and enhancing equity and democratic participation.

15. The current budget provided funding for such assistance in the field of education as grants, textbooks and school feeding programmes. Despite progress, much remained to be done. The taxation regime was being modified to exempt lower income groups from taxes, while applying pay-as-you-earn schemes to others. The Government was currently examining ways of mainstreaming into its development efforts marginalized populations, such as pastoral communities in semi-arid and arid areas, for example by meeting their needs for food, free education and health services. Implementation of cost-sharing measures had been somewhat difficult, as the Government had originally planned to use a waiver system for the poor, but that scheme had not worked very well.

16. With regard to the impact of value-added tax (VAT) on the poor, his Government was well aware of the serious problems facing the poor and their children and tried whenever possible to zero-rate goods which had a direct impact on their survival. Medicines, medical equipment, mosquito nets and food, for example, were all zero-rated.

17. Ms. WAMAE (Kenya) said that the poor were barely affected by cost-sharing in the health system. A waiver system had been introduced which meant that no one was refused treatment because of inability to pay. In any case, cost-sharing was minimal in primary health care, and it was in that area that the Government concentrated its resources. In addition, maternal and child health care, as well as care for children under the age of five, was free.

18. She acknowledged that there were problems with birth registration, although it had been compulsory since 1971 and was administered by civil servants. In hospitals, all births were registered, but most births in Kenya took place at home. Traditional birth attendants had therefore been trained to advise new mothers on birth registration, as well as such aspects as immunization. The efforts of the Government agencies and ministries concerned were aimed at raising awareness among community leaders and the print media and getting across the message that birth registration was a child's right. The first steps had also been taken towards automating the registration system.

19. The CHAIRPERSON, speaking in a personal capacity, sought clarification on the large discrepancy between the number of births registered and the number of birth certificates issued. With regard to the Domestic Violence Bill, rehabilitation and action to help the victims were of course important, but prevention was better; he would like to know whether the Government had any measures in mind to prevent violence and corporal punishment in the home. Noting the diminishing role of the extended family and the rise in single-parent families in Kenya, he asked whether that change had caused any problems and, if so, how they were being addressed.

20. Mr. OSUNDWA (Kenya) said that most births took place in rural areas, where people did not realize how important a birth certificate was, and local communities were slow to notify government officials of births. The discrepancy between the number of births registered and the number of certificates issued was probably due to a combination of that lack of awareness - which the Government was working hard to rectify - and delays in processing the large numbers of applications that flowed in once the Government's message was understood.

21. Mr. WAMBUA NZIOKA (Kenya) said that it was very difficult to prevent violence in the home as the authorities did not find out about it until after the event, when the victims reported it to the police or were treated for injuries. He was keen to learn from other countries about the best way to prevent violence in the home. In any case, it was clear that corporal punishment in the home could not, in the present day and age, be considered as having any rehabilitative function.

22. Mr. KANDIE (Kenya) pointed out that the Domestic Violence Bill dealt with protection and rehabilitation and provided for funding for those activities. Its aim was to provide victims with speedy and affordable access to the courts and with rehabilitation and after-care programmes. It also required perpetrators to attend corrective programmes aimed at preventing repeat offences.

23. In reply to an earlier question, he confirmed that the human rights curriculum covered the rights of the child. The measures in the Children Bill would deal with the actual implementation of the Convention on the Rights of the Child, while the Standing Committee on Human Rights would deal with all other aspects of human rights, including children's rights.

24. The CHAIRPERSON invited members of the Committee to ask questions about basic health and welfare, education, leisure and cultural activities and special protection measures.

25. Mr. CITARELLA said he was confused by the fact that Kenya had four systems of family law - Islamic law, African customary law, Hindu law and English law - not to mention Hanafi and Ithnashari law (CRC/C/3/Add.62, para. 272), especially as parliament could enact legislation limited to only one of those systems. He would like to know whether the new Children Bill would apply across all the legal systems in Kenya.

26. There were a number of serious problems facing children in Kenya. Education was not compulsory or free, and there was a severe shortage of essential teaching materials, including books. Greater efforts were required in the area of health: there was a critical need for new programmes and funding to combat the predicted rise in cases of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), while the campaigns against female genital mutilation and for immunization against malaria had yet to yield results. In the area of juvenile justice, the system was generally not "child-friendly"; there was a shortage of special centres for children and there were no juvenile courts. There had been disturbing reports of inhuman treatment and even torture in prisons, and also of ill-treatment in schools and families. In refugee camps, despite the Government's efforts to improve matters, the situation was still very serious, with many reports of sexual abuse of children. Sexual exploitation of children in Kenya appeared to be on the increase; perhaps the delegation could shed some light on the reasons for that and any plans the Government might have to curb it.

27. Ms. AL-THANI said that a holistic approach was needed to address the array of problems facing children with disabilities in Kenya. The first thing needed was a set of proper statistics and a careful analysis of the causes and prevalence of disabilities. There should be a campaign to persuade families that children with disabilities were not a curse or a bad omen, but children in need of treatment and care. Only a very small percentage of disabled children attended mainstream schools: where were the rest? Were there special education centres for the blind or physically handicapped, for instance? In general, if the situation of disabled children was to be improved, the very small amount allocated to them in the budget would have to be reviewed. She would welcome information on the findings of the task force set up in 1992 to consider the problems of disabled children, on any special training to equip teachers to deal with children with special needs and on the reasons for the higher incidence of sexual abuse of disabled children.

28. Ms. CHUTIKUL said she would like to know whether it would be feasible for district registrars to issue a birth certificate as soon as they received notification of a birth, without waiting for a request for the certificate, and to forward it immediately for collection to the centre where the birth was registered.

29. She asked for details of the follow-up to the survey of children in especially difficult circumstances carried out in conjunction with the United Nations Children's Fund (UNICEF) in 1997 (CRC/C/3/Add.62, para. 305) and for more information on measures taken to improve

the situation described in paragraph 505 of the report, concerning the continued prevalence of child labour in Kenya. The increase in the number of street children was worrying, and it was to be hoped that the Government, in its next plan of action, would pay more attention to children in special need of protection.

30. Mr. AL-SHEDDI asked for further information on the services, including schooling, provided for children in refugee camps. He also wished to know what was done to guarantee their security, especially in the case of girls. He had been shocked to see the high number of street children in Kenya, and would welcome information on what became of them and on the measures being taken to reduce their numbers. He was also concerned about the literacy rate: although it had risen to 77 per cent, he wondered if part of that rise was due to the fact that not all children were in school. Precise data on school enrolment rates should be provided.

31. Ms. EL GUINDI said that there were reports that children accounted for up to 70 per cent of the labour force, with most of them working in the informal sector on plantations, in mines and as domestic servants. She understood that the practice was rooted in the traditional view of children as a source of economic stability in families, but would like to know how the Government proposed to protect children from economic exploitation.

32. Ms. OUEDRAOGO asked whether the document entitled The Way Forward, included in an annex to the initial report, was an official document. How were the measures listed in the document going to be implemented?

33. The report referred to a lack of specialized health services for adolescents, but no mention was made of measures that would be taken to rectify the situation. Given that teenage pregnancies were on the increase, were any programmes in place to provide teenagers with information or advice about sex, for example? It would be interesting to know whether teenage mothers were given the opportunity to continue their studies. Further details would also be welcome regarding psychological support available to young people.

34. It was clear that female genital mutilation took place in Kenya. Further information was needed about the measures taken to discourage the practice and about the progress that had been made in that respect. In addition, it was unclear whether measures were being taken to promote breastfeeding, and whether there was any legislation to regulate the marketing of breast milk substitutes.

35. The State party should also indicate what measures were being taken to help the increasing number of children orphaned by AIDS, especially those who had become heads of household, considering that the number of extended families in Kenya was in decline.

36. The Special Rapporteur on the sale of children, child prostitution and child pornography had prepared a report about the issue of child prostitution and sexual tourism in Kenya. It would be interesting to know how the recommendations made in the report had been addressed, and whether boys as well as girls were taken into account, considering that, according to the report, both girls and boys were involved.

37. Drug abuse was an increasingly serious problem, and drug trafficking was taking place in schools. Although no official studies had been made, surveys on drug abuse had been carried out in some districts. What had been the outcome of those surveys and what treatment was being provided to young drug addicts? It would also be interesting to know what was being done in schools to combat the problem.

38. Ms. TIGERSTEDT-TÄHTELÄ said that the human rights treaty bodies had received very little information from the State party about the general human rights situation in Kenya. The Committee did have reference, however, to material such as the 2000 Amnesty International country report, which listed human rights infringements ranging from torture and extrajudicial killings to denial of the right to a fair trial and harsh prison conditions, as well as the fact that refugees were often subjected to poor living conditions. As those issues had consequences for child rights, it would be useful to hear the delegation's assessment of the situation.

39. The CHAIRPERSON said that he would appreciate additional information on the situation of street children. There seemed to be a lack of distinction between children in need of discipline and those in need of care and protection. According to allegations, police brutality against street children continued to persist, and street children were arbitrarily arrested and detained for long periods.

40. Kenya had a good record of activities developed in relation to child labour, and had been one of the first countries to become involved in the International Programme on the Elimination of Child Labour (IPEC). However, according to a recent report by ILO, 3.5 million children aged between 6 and 14 did not attend school, and UNICEF had estimated that 850,000 of them were working in the streets. There were 22 IPEC/ILO programmes in Kenya, which had been running for some time, and he failed to understand why those programmes had not had a greater impact. Not only were there low attendance and high drop-out rates at the level of primary education, but the transition rate from primary to secondary education was below 50 per cent. Although places in secondary education had been increased in recent years, there were still not nearly enough places for children aged between 14 and 17. He would welcome information on any policies to promote secondary education.

The meeting was suspended at 4.40 p.m. and resumed at 4.55 p.m.

41. Mr. OSUNDWA (Kenya) said that the issue of refugees was of international concern. Kenya had always been willing to share its scant resources and had never closed its borders to

wartime refugees from other countries in Africa. Camps had been built to house thousands of refugees, many had been given work and refugee children had been offered places in schools. However, there had been a problem concerning refugees who had brought guns with them and the camps were often dominated by criminals, which had led to a feeling of insecurity. Unfortunately, the funding provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) had been reduced, which made it difficult for the Government to control the situation. The lack of funding had also caused malnutrition among children in the camps. He appealed for more funding to care for the refugees.

42. Mr. OLE KWALLAH (Kenya) said that he had attempted to visit three refugee camps in Kenya in order to report on the situation, but had been refused entry. Finally he had been able to access one of the camps and had noted a strong police presence. One of the major problems in the refugee camps was the shortage of food; from what he had seen, refugee children were victims not so much of sexual exploitation but of hunger. He hoped that UNHCR would assist the Government in obtaining information about the situation.

43. Mr. OSUNDWA (Kenya), replying to a question about children orphaned by AIDS, acknowledged that the epidemic had put a strain on the traditional support and care system and that an improved system of social services was needed. There were 1 million AIDS orphans in Kenya, some of whom had AIDS themselves, and many ended up living as street children. The Government had prepared an HIV/AIDS strategic plan for the period 2000-2005, under which information was being disseminated to educate people and to reduce discrimination against infected persons. Other projects included the training of community workers and carers, the establishment of voluntary counselling and testing centres and patient support services in all districts. It was possible that adoption laws would be modified to take into account the increasing number of orphans. Women were largely responsible for caring for the sick and dying and were therefore a priority for social services. AIDS had also had an adverse effect on the industrial sector. The productive labour force had been weakened, which had led to an increase in prices. That, combined with lower household incomes, had reduced demand for industrial goods.

44. Mr. OLE KWALLAH (Kenya) said that the issue of AIDS orphans had not been addressed until recently because it had taken time to establish the National AIDS Control Council and because legislation to spearhead activities in that field had only recently been enacted. Since then, the Government had created AIDS control units both at national and district level, and staff had been trained to deal with children suffering from AIDS. Emphasis would be placed on community-based programmes. The Government had been providing additional funding to institutions which helped children affected by HIV/AIDS, and he was confident that more progress would be made.

45. Mr. OSUNDWA (Kenya) said that a Government fund for disabled persons had existed for over 10 years. Disabled persons were being encouraged to take part in income-generating activities. He acknowledged that children with disabilities were sometimes seen as a curse and

excluded from society, but that attitude was not unique to Kenya and efforts were being made to change attitudes towards people with disabilities. With international support the situation of disabled members of society would continue to improve.

46. Mr. KANDIE (Kenya) said that a task force had been established in 1992 to draft a bill for persons with disabilities, which was soon going to be put before Parliament. The bill recommended that persons with disabilities should not face discrimination in areas of education or employment and that adequate facilities should be provided. Voluntary groups, NGOs and other associations were working with the Government to improve the situation of disabled persons.

47. Mr. AWUONDA (Kenya) said that Kenya had traditionally been comprised of four different groups, characterized by different practices and beliefs: Africans unconverted to Christianity and governed by traditional customs, Muslims, accounting for approximately a third of the population, white settlers who subscribed to Western Christianity, and the Hindu community, making up most of the business sector. Following the country's independence in 1963, a commission had been set up in 1968 to harmonize existing laws. It had presented a bill to Parliament which had been rejected owing to deeply entrenched sentiments, particularly within the traditional African community. In preparing the Children Bill, an attempt had been made to discard sectarian attitudes in order to make the provisions applicable to all children, and that had been partially achieved. However, different communities still disagreed on certain issues, such as adoption and the age of marriage. Notwithstanding those difficulties, every attempt had been made to adapt the provisions of the Convention to the local realities.

48. Juvenile courts had been established under the Children and Young Persons Act, although only one such court existed, in the capital, due to lack of sufficient funding. In other areas, regular courts acted as juvenile courts whenever necessary. The Children Bill provided for courts specifically devoted to children's issues, whose remit would extend beyond delinquency to include matters such as adoption, guardianship and neglect. Additionally, that year, a Family Division had been established within the High Court which would later serve as an appeal court for the juvenile courts.

49. Female genital mutilation was a highly sensitive issue, and the Government had been hesitant about enacting relevant legislation for fear that the activities would continue illegally. Nevertheless, the Children Bill stipulated that children should not be subjected to traditional rites or social customs which were detrimental to their lives, health and dignity, with the unstated target being the practice of female genital mutilation.

50. On the question of arrests of children, in the wake of the HIV/AIDS pandemic the number of street children had swelled, leading to a rise in juvenile delinquency. However, street children also included young people of over 16 and even over 18 who were involved in criminal acts; although it might appear that the police were harassing street children, that was not the case. In any event, the police were also being made aware of the provisions of the Convention.

51. Mr. KANDIE (Kenya) said that a bill on access to justice was being drafted to envisage provision of legal aid and that a pilot scheme had been launched to provide such assistance in the form of pro bono work and the provision of assigned legal counsel.

52. Mr. OSUNDWA (Kenya) said that the Government had acknowledged that child labour existed in the country and that it was one of the worst forms of exploitation. In cooperation with ILO it had drawn up a pilot project which would begin as soon as needed funds were provided by Kenya's international partners.

53. Mr. OLE KWALLAH (Kenya) said that a concerted effort had been made to tackle the problems of street children and child workers in cooperation with the United Kingdom, the United Nations Children's Fund (UNICEF), the German Agency for Technical Co-operation (GTZ), several NGOs, the Children Legal Action Network (CLAN) and the Save the Children Fund United Kingdom, with the latter assisting in diversion programmes for children in conflict with the law. Following the State party's ratification of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) it had developed a child labour policy which had been transmitted to the Cabinet of Ministers for approval.

54. Mr. SANG (Kenya), replying to a question on drug abuse, said that a task force had recently been established by the Ministry of Education to monitor discipline in secondary schools. The Government had also set up a national agency for drug abuse - the National Agency for Campaign Against Drug Abuse - in which several government departments and NGOs participated. It had also been discovered that students were academically overburdened, and efforts were being made to reduce their workload, giving them more time for recreation, and also decreasing the amount of school supplies required. In fact, the Government had been allocating greater sums to education since 1993, with the bulk of the increase assigned to teachers' salaries.

55. As far as disabled children and special education were concerned, there was a lack of teachers trained in special education. In order to make up for the shortfall, the Government had recently initiated a distance learning special education programme and had also offered grants to special education institutions. He assured the Committee that adolescent mothers were given opportunities to resume their studies. Concerning secondary school transition rates, there were admittedly not enough secondary school places for the number of children making the transition from primary to secondary schools. Consequently, the Government was envisaging converting the single-shift schools into two-, three- and even four-shift schools in order to create more space. Bursaries to secondary schools had also been increased in order to curtail the drop-out rate. In addition, the Ministry of Education was making every effort to keep school fees as low and as affordable as possible.

56. Mr. CITARELLA commended the delegation for the frankness with which it had engaged in dialogue with the Committee, and noted with satisfaction the improvement in the Government's general policy relating to children. However, it was evident from the discussion that more funding was needed to improve the general situation. He commended the Government for introducing relevant draft legislation despite the diverse social and cultural realities that coexisted in the State party. It was important for the Constitution to be amended so as to limit the possibility of separate pieces of legislation being advanced by different cultural groups. The Children Bill was important as it complied with the provisions of the Convention, but its

effectiveness could be hindered by the amount of time it would take to be enacted and implemented. It might be more feasible to put smaller and more detailed bills through Parliament, which would be less time-consuming and would also make it possible to concentrate on specific issues such as the minimum age of criminal responsibility.

57. Mr. KANDIE (Kenya) thanked the Committee for its fruitful dialogue with his delegation, which had taken due note of the concerns expressed and would transmit them to its Government. Special efforts would be made to expedite pending legislation to improve promotion of the rights of the child. In view of the limited resources at its disposal, however, he appealed to the Office of the High Commissioner for Human Rights and other international institutions for technical and financial assistance.

58. The CHAIRPERSON commended the State party on its commitment to the implementation of the Convention and said that the Committee's open and frank discussion with the delegation had enabled it to gain insight into the situation of children in Kenya.

The meeting rose at 6.05 p.m.